

**Town of Georgina
Lake Drive Shoreline Jurisdiction Ad Hoc Committee
COMMITTEE AGENDA**

Tuesday, June 14, 2016
6:30 PM
Council Chambers- Civic Centre

1. CALL TO ORDER
2. ROLL CALL
3. INTRODUCTIONS OF ADDENDUM ITEM(S)
4. APPROVAL OF AGENDA
5. DECLARATIONS OF PECUNIARY INTEREST AND GENERAL NATURE THEREOF
6. ADOPTION OF MINUTES
 - (1) Pages 1 - 9
Minutes of the meeting held on April 19, 2016.
7. PRESENTATIONS
8. CONSIDERATION OF REPORTS ON THE AGENDA
 - (1) Pages 10 - 13
Proposed Interim Policy Lake Dr. North and East Road Allowance
 - (2) Pages 14 - 19
Memo Re: ownership, leasing and licensing.
9. COMMUNICATIONS
10. OTHER BUSINESS
 - (1) Schedule upcoming meeting dates.
11. MOTION TO ADJOURN

**Town of Georgina
Lake Drive Shoreline Jurisdiction Ad Hoc Committee
COMMITTEE MINUTES**

Tuesday, April 19, 2016
6:30 PM
Council Chambers- Civic Centre

1. CALL TO ORDER

The meeting was called to order at 6:32 PM.

2. ROLL CALL

The following Committee members were present:

Alan Direnfeld
David Szollosy
Cathy Hasted
Councillor Dan Fellini
Councillor Dave Neeson
Deyril Blanchard
Mayor Margaret Quirk
Susan Jagminas
Carr Hatch

The following Committee member was absent with regrets:
Peter Stevens

The following Committee member was absent:
Terry Holgate

The following Staff members were in attendance:
Winanne Grant, Chief Administrative Officer
Harold Lenters, Director, Planning & Building
Dan Pisani, Director of Infrastructure and Operations
Andrew Biggart, Town Solicitor
Rod Larmer, Manager of Building and Chief Building Official
Bob Fortier, Manager of Capital Projects
Sarah Brislin, Committee Services Coordinator

3. INTRODUCTIONS OF ADDENDUM ITEM(S)

- (1) Draft Interim Control By-law, Lake Dr. North and East Road Allowance and Water/Lakebed of Lake Simcoe attachment

Moved by Susan Jagminas, Seconded by Councillor Dan Fellini

RESOLUTION NO. LDSJAH-2016-0011

That the Draft Interim Control By-law, Lake Dr. North and East Road Allowance and Water/Lakebed of Lake Simcoe additional information attachment, addendum item be approved.

Carried.

4. APPROVAL OF AGENDA

Moved by Mayor Margaret Quirk, Seconded by Susan Jagminas

RESOLUTION NO. LDSJAH-2016-0012

That the agenda for the Lake Drive Shoreline Jurisdiction Ad Hoc Committee meeting held on April 19, 2016, be approved with the addendum item.

Carried.

5. DECLARATIONS OF PECUNIARY INTEREST AND GENERAL NATURE THEREOF**6. ADOPTION OF MINUTES**

(1) Minutes of the meeting held on March 29, 2016.

The Committee discussed the minutes of the previous meeting (March 29, 2016).

Moved by Susan Jagminas, Seconded by Cathy Hasted

RESOLUTION NO. LDSJAH-2016-0013

That the minutes of the Lake Drive Shoreline Jurisdiction Ad Hoc Committee meeting held on March 29, 2016, be approved with the following amendments:

1. The word voice on the bottom of page 7 in the statement "Concern that Staff are acting in a policy voice", be replaced with the word void.
2. The word vague on page 10 (under the Communications Protocols) be taken out.

Carried.

7. PRESENTATIONS

(1) Volume of shoreline inquiries.

At the previous meeting, the Committee requested staff provide a review of recent inquiries and volume of inquiries related to shoreline development. Dan Pisani, Director of Infrastructure and Operations, provided an overview of the type of inquiries that have been received since the previous Committee meeting. Examples of inquiries included:

- People wanting to build a boat house
- People asking about exclusive use rights (multiple inquiries)
- The right to build on shoreline
- The right to put up signs
- Requests to build (ex. Request to build a shed on the road allowance)
- Fences –parallel and perpendicular (perpendicular, illustrates ownership)

Dan Pisani reminded Committee members that there are safety concerns and without a policy it is hard to enforce.

(2) Mapping update.

It was noted that the mapping update (mapping schedule) would be discussed with the Proposed Interim Control By-law.

(3) Road Allowance Education 101, continued.

Andrew Biggart, Town Solicitor, provided a verbal summary of the road allowance educational piece that had previously been provided to Council to help further the Committee's understanding of road allowances. The following information that was reviewed:

- A road allowance includes a traveled and an untraveled portion
- Under the *Municipal Act*, the road allowance cannot be obtained through the adverse possession. Which is to say you cannot come to acquire the land on a road allowance by maintaining and controlling for any period, however long.
- In the original definition, the road allowance was from the lake to the road.
- Some people may have been perceived to be, or accepted as, the owners without the land being conveyed by the municipality because previously anyone could register anything on title. There may have also been a common acceptance among the community that a property occupied by a certain person belonged to that person.
- Once waters become navigable, they are considered Crown land, there is no land in between the road allowance and Crown lands that is privately owned unless it was deeded. You cannot take Crown land by adverse possession unless the Crown says that you can.
- Conveyance of a roadside allowance should take into consideration:
 - Access to the untraveled portion
 - Obligations for access to service providers (utility companies).
- Alternatives to conveying a the entire road site allowance are:
 - Convey a portion of a roadside allowance

- Lease a part of a roadside allowance
 - Grant exclusive use rights
- Challenges to the municipality's ownership (of the Lake Side Drive road allowance) would be proven by a deed that shows conveyance from the municipality.
- There would need to an examination on a site-by-site basis.
- An Interim Control By-Law (ICB) would not impact the concept of exclusive use.
- Previously private roads "trespass roads" were assumed by municipalities once a municipality spent money on them.

The Committee discussed whether or not there was a need to focus on the matter of ownership versus development on the shoreline (road allowance) and if the ICB would allow the Committee the time they needed to focus on the identified on the issues lists.

Andrew Biggart suggested that land can be identified by finding out what the traveled road allowance is so that a surveyor can measure a distance from there to create a reference plan (R-plan) to create the conveyable, leasable or lots to license. It was clarified that the Committee should still address the other concerns on the issues list and should make recommendations with respect to options for ownership, leasing, or exclusive use agreements.

Following the Road Allowance Education 101 presentation, the Committee entered into a discussion with staff regarding the evolution of the concerns that have led to the creation of the Lake Drive Shoreline Jurisdiction Ad-hoc Advisory Committee.

The Committee was advised the intent of the report (OED-2015-0025) that was sent to Council last July, was to make Council aware there was an issue; that staff require direction to address inquiries related to development on the shoreline (road allowance) the land ownership is being disputed over. In relation to the absence of direction, the ICB is supported by staff as a step towards putting a policy in place.

Staff were asked if they cannot just enforce the by-laws that are already in force, and for clarification as to why staff require direction and can't follow the policies in place.

The Committee was advised there are no policies in place; there are no by-laws that apply that can be enforced in relation to the concerns facing the shoreline area.

Mayor Quirk asked staff if they are getting any inquiries about what can be built and about ownership before the report (OED-2015-0025) went to Council in July.

Dan Pisani advised that he had received inquiries which is why the report went to Council to request direction.

It was clarified that a draft policy went to Council in 2008 but it was never adopted, in the absence of policy the draft has been used as a guideline. The Committee was advised that Council could at any time 'say to staff that we did not give you that as a direction.'

Harold Lenters further clarified that zoning is not in place on the road allowance because construction shouldn't be happening on the road allowance. This situation is unique because there are people who believe they own the road allowance and want to build on it. Because the ICB (if it were in place) would protect the land, not the ownership, there would be a clear process of going to court and enforcing removal if someone builds without a permit. Without the ICB, the Town could still go to court to get the structure removed, but then the ownership issue will come into effect and could take be a much longer to resolve.

The question was raised as to why when staff have been working in a policy void for so long there was a rush to resolve the matter now, the question was raised whether the focus should be on what the appropriate use of the land is and the concern that the Interim Control By-law does not address the ownership issue.

Dan Pisani responded clarifying that the intent of the report (OED-2015-0025) the report was to address the issues:

- Ownership/exclusive use
- The lack of policy
- Encroachment

The question was asked why there was an issue with getting an order and having structures that had been illegally built removed from Town land.

Andrew Biggart responded that this is not the type of scenario where it may be plain and obvious that land being built on is Town owned land. In reality, they may pull out a deed that says they own the land which will result in protracted litigation whereas an ICB allows the town to side step ownership and say it doesn't matter who owns it tear it down.

Concerns were raised that endorsing an ICB might go beyond the Committee's mandate if the Committee's mandate is to address ownership/exclusive use/ licensing issues.

Winanne Grant, Chief Administrative Officer, clarified the staff report in July was an attempt to provide a solution, which evolved into the creation of the Committee. The Terms of Reference and mandate of the Committee was established. The concept of the ICB was derived from the idea that the

Committee would need time to come to a solution. The purpose of the ICB would be to provide time for the committee to come up with a solution to the issues.

Moved by Mayor Margaret Quirk, Seconded by Susan Jagminas

RESOLUTION NO. LDSJAH-2016-0014

That the Lake Drive Shoreline Jurisdiction Ad Hoc Committee receive the April 19 agenda item 7(3), *Road Allowance Education 101, Continued*.

Carried.

8. CONSIDERATION OF REPORTS ON THE AGENDA

(1) Draft Issues List

A. Staff Version Draft Issues List

B. Lake Drive Shoreline Jurisdiction Ad Hoc Committee Issues list
(Email from Deyril Blanchard March 2, 2016)

C. Email Attachment

The Committee discussed the purpose of the Committee Issues lists.

Winanne Grant advised that the intent of the document was to provide a point of reference. The recommendation is to abort the exercise and move on to matters more deserving of the Committee's time.

Moved by Mayor Margaret Quirk, Seconded by David Szollosy

RESOLUTION NO. LDSJAH-2016-0015

That the Lake Drive Shoreline Jurisdiction Ad Hoc Committee receive the following:

1. The staff version of the draft issues list

2. Email from Deyril Blanchard March 2, 2016

3. Lake Drive Community Committee version of issues list (attachment to email to staff from Deyril Blanchard)

Carried.

(2) Proposed Interim Control By-law - Lake Dr. North and East Road Allowance and Water/Lakebed of Lake Simcoe

The Committee discussed RESOLUTION NO. LDSJAHC-2016-0010;
That the Lake Drive Shoreline Jurisdiction Ad-hoc Committee approve as amended, item 8(2), Report on Interim Control By-law.

It was noted at the previous meeting that “the Committee requested the amended draft come back for review before going to Council.”

The Committee discussed the intent of the resolution and the latter statement and whether the intent was for the ICB to be approved in principal or whether it was meant for the Committee to review and then decide.

The Committee discussed the intention of the ICB to prevent people from building on Town property without permits.

Harold Lenters added that in addition to the problems related to people who are illegally building without a permit, there are also problems for people who want to build who are trying to get a permit through the right processes. The example used was the dock in the water that connects to the Town's shoreline. The Committee was advised, without a policy in place these people will be turned down every time, and an ICB will help get quickly establish what is and what is not allowed so people who are able to get permits can.

The Committee discussed the ability for an interim policy instead of an interim control by-law in offering the ability to establish quickly what is and what is not allowed so people who are able to get permits can get permits.

The Committee suggested that the policy be a permissive policy, not a restrictive policy be developed. The values of both an interim policy and an Interim Control by-law were discussed.

Moved by Mayor Margaret Quirk, Seconded by David Szollosy

RESOLUTION NO. LDSJAHC-2016-0016

That the Lake Drive Shoreline Jurisdiction Ad Hoc Committee receive the Proposed Interim Control By-law (Lake Dr. North and East Road Allowance and Water/Lakebed of Lake Simcoe) and recommend that it not be forwarded to Council.

The Committee was reminded of the following:

- That Council may still request an Interim Control By-law be drafted
- That the *Proposed Interim Control By-law - Lake Dr. North and East Road Allowance and Water/Lakebed of Lake Simcoe*, included on the agenda addressed two issues as staff had already begun working on an Interim Control By-law prior to the Committee's request for one to be drafted for their review.

- The other matter (relating to the water/lakebed of Lake Simcoe) addressed in the proposed draft staff had already planned to take to Council
- The two issues were combined in one ICB and brought to the Committee as one so that the Committee would be aware and not be surprised by it.

The Committee discussed the water/lakebed being beyond their jurisdiction and whether or not it would be appropriate and necessary to distinguish between the two aspects of the report in their motion.

Moved by Mayor Margaret Quirk, Seconded by David Szollosy

RESOLUTION NO. LDSJAH-2016-0017

That the Lake Drive Shoreline Jurisdiction Ad Hoc Committee receive the Proposed Interim Control By-law with respect to Lake Dr. North and East Road Allowance and recommend that it not be forwarded to Council.

Carried.

The Committee discussed the next steps and recapped that they had previously considered an interim policy which would be positive and permissive rather than restrictive.

Staff advised that the draft ICB does contain detail regarding what would be allowed on the road allowance. It was suggested:

- That staff use the bulk of the ICB into the interim policy.
- Some structures would require a permit while others wouldn't. There would be some direction.
- The policy void would be satisfied until a more permanent policy was in place.
- If the draft ICB was going to be used that under a provision be added to include remove or demolish under 3a).

Moved by Councillor Dave Neeson, Seconded by David Szollosy

RESOLUTION NO. LDSJAH-2016-0018

That the Lake Drive Shoreline Jurisdiction request staff draft a positive policy to be presented at the next meeting for the Committee's consideration.

Carried.

Moved by Carr Hatch, Seconded by Councillor Dave Neeson

RESOLUTION NO. LDSJAH-2016-0019

That the Lake Drive Shoreline Jurisdiction request staff bring forward a report for consideration at the June 14th meeting which will clearly indicate the following:

1. The options for owners including ownership, leasing and licensing.
2. The pros and cons of each of the options (ownership, leasing and licensing).
3. The means by which those options (ownership, leasing and licensing) may be exercised achieved.

Carried.

9. COMMUNICATIONS

10. OTHER BUSINESS

- (1) Scheduled meeting dates:
May 17, 2016. Location: Council Chambers 6:30 PM
June 14, 2016. Location: Council Chambers 6:30 PM

Councillor Neeson advised of his regrets for the upcoming May 17, 2016, meeting.

11. MOTION TO ADJOURN

Moved by Alan Direnfeld, Seconded by David Szollosy

RESOLUTION NO. LDSJAH-2016-0020

That the Lake Drive Shoreline Jurisdiction Ad-hoc Committee April 19, 2016, meeting be adjourned at 8:39 PM.

Carried.

Deyril Blanchard
Chair

C. Sarah A. Brislin
Committee Services Coordinator

THE CORPORATION OF THE TOWN OF GEORGINA

DRAFT REPORT NO. OID-2016-0029

**FOR THE CONSIDERATION OF
LDSJAHC
JUNE 14, 2016**

**SUBJECT: LAKE DRIVE NORTH AND EAST – DRAFT INTERIM POLICY FOR
THE DEVELOPMENT OF ROAD ALLOWANCE IN THE AREA OF
THE LAKE DRIVE NORTH AND EAST SHORELINE**

1. RECOMMENDATION:

- 1. That the LDSJAHC receive Report OID-2016-0029 prepared by staff and dated June 14, 2016 regarding Lake Drive north and east - Draft interim policy for the development of road allowance in the area of the Lake Drive north and east shoreline**
- 2. That the LDSJAHC provide direction to staff on interim Policy RD -19.**

2. PURPOSE:

To propose an interim policy for the Lake Drive north and east shoreline development.

3. BACKGROUND

Staff were directed to report back to the Committee as per the following resolution:

RESOLUTION NO. LDSJAHC-2016-0018

That the Lake Drive Shoreline Jurisdiction request staff draft a positive policy to be presented at the next meeting for the Committee's consideration.

Carried.

Moved by Carr Hatch, Seconded by Councillor Dave Neeson

Staff are seeking support from the **LDSJAHC** for draft Policy No. RD19. If supported the policy will be brought to Council for consideration of adoption so that staff has the ability to regulate issues regarding development and indemnification on the affected road allowance during the period in which the LDSJAHC continues with its mandate.

4. ANALYSIS:

The attached policy provides guidelines for allowable development at the affected Lake Drive north and east shoreline (Attachment 1).

Before the town will approve any uses outlined in this draft policy RD 19, the abutting owner must ensure all the applicable approvals are in place from the Lake Simcoe Region Conservation Authority, Ministry of Natural Resources, Town of Georgina, and any other governing authorities. In some cases, abutting owners will also be required to provide engineered drawings.

5. FINANCIAL ANALYSIS AND BUDGETARY IMPACT:

N/A

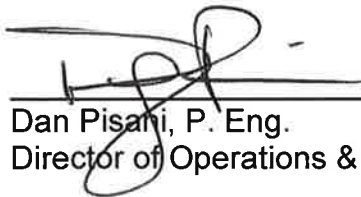
6. PUBLIC CONSULTATION AND NOTICE REQUIREMENTS:

N/A

7. CONCLUSION

Staff recommend adoption of the draft policy.

Recommended by:



Dan Pisani, P. Eng.
Director of Operations & Infrastructure

Approved by:



Winanne Grant, B.A., AMCT, CEMC
Chief Administrative Officer

Attachment 1 – Draft Policy No. RD19

SUBJECT: Lake Drive – Interim Policy RE: Development of Town road allowance in the area of Lake Drive North and East shoreline.	AUTHORITY: Council Resolution TBA	
DEPARTMENT: Operations and Infrastructure	PAGES: 2	DAY MONTH YEAR June 14/2016
APPROVED BY: Director of Operations & Infrastructure/ Mayor and Council	CONTACT POSITION FOR INFO: Director of Operations and Infrastructure	

POLICY STATEMENT

That where the Lake Drive North and Lake Drive East road allowances run along the shoreline of Lake Simcoe: The following shall apply:

For the purposes of this Policy:

- a. "Council" shall mean the Council of The Corporation of the Town of Georgina;
 - b. "Fence" shall mean a barrier, including one for noise attenuation, or any structure, except a structural part of a building, that wholly or partially screens from view, encloses or divides land, and includes any hedge or shrub that has the same effect;
 - c. the terms "Boathouse", "Building", "Structure", and "Town" shall have the same meanings as such terms have for the purposes of the Town's Zoning By-law No. 500, as amended.
 - d. rehabilitate, renovate, repair or replace a Building or Structure that was in existence on the date of the passing of this By-law provided that it does not result in the said Building or Structure having a floor area or height that exceeds that which it had on the date of the passing of this Policy;
 - e. "subject lands" means all lands contained within the untraveled portion of the road allowance on Lake Drive North and Lake Drive East that is between the lake and the traveled portion of the road allowance;
1. A person is permitted to repair or replace a retaining wall on the subject lands that was in existence in the on the date of the passing of this policy, provided that the repaired or replaced retaining wall does not exceed a height of 0.6 metres measured from the average grade of the land along the retaining wall.
 2. A person shall obtain the approval of the Town prior to regrading any part of the subject lands

POLICY NO: RD 19

3. No person shall on the subject lands:
 - a) construct, erect or place a Fence that:
 - i. is located less than 1.5 metres from the edge of the adjacent Lake Drive North or East, as applicable, road pavement;
 - ii. has a maximum height greater than 1 metre measured from the centreline of the adjacent Lake Drive North or East, as applicable;
 - iii. is not parallel to the adjacent Lake Drive North or East, as applicable; and
 - iv. has an area of Fence material that exceeds 50% of the overall area of the Fence.
 - b) plant a tree or shrub that is less than 1.5 metres from the edge of the adjacent Lake Drive North or East pavement, as applicable;
 - c) construct a new retaining wall where one did not exist on the date of the passing of this Policy.
4. No person shall regrade any part of the subject lands steeper than a slope of 3:1 measured horizontal to vertical.
5. No person shall connect, to or from the subject lands, any Building or Structure to the Town's water or sewer services on the Lake Drive North and East road allowance on the lake side.
6. No person shall have a plumbing permit issued pursuant to the *Building Code Act*, 1992, S.O. 1992, c .23, as amended, and its regulations and the Town's Building By-law No. 2015-0150 (BU-1) for any Building or Structure located on the subject lands.
7. Rehabilitation, renovation, repair or replacement to or of a Building or Structure on the subject lands that was in existence on the date of the passing of this Policy may be permitted and shall comply with the provisions of the Open Space (OS) zone in the Town's Zoning By-law 500, as amended, and notwithstanding any provision in the (OS) Zone to the contrary, no rehabilitation, renovation, repair or replacement to or of a Building or Structure shall not result in any Building or Structure having a floor area or height that exceeds that which it had on the date of the passing of this Policy.

VIA EMAIL

June 10, 2016

Winanne Grant
Chief Administrative Officer
Town of Georgina
26557 Civic Centre Road, R.R. #2
Keswick, ON L4P 3G1

Dear Ms. Grant:

RE: TOWN OF GEORGINA - LAKE DRIVE SHORELINE ROAD ALLOWANCES

You have requested our opinion as to the options available to the Corporation of the Town of Georgina ("Georgina") to provide exclusive use, to the adjacent property owners, of the disputed lands along the shore road allowance along Lake Drive North and East.

Background

We will not delve into the specifics of the existence of the road allowance along Lake Drive as this has already been studied in detail in the *Russell* report which was previously prepared for the Town and which has been made available for the public to review. However, in general, we confirm that the creation of roads along lakeshores in Ontario generally occurred by way of Crown surveyors reserving road allowances along the edges of Ontario lakes (typically 66 feet wide) for the purpose of allowing the public to access land when travelling by way of water. Although the majority of these road allowances remain unopened (unlike Lake Drive), many waterfront property owners do not own their lots right up to the water's edge and have in many instances encroached on same by constructing docks and developing dwellings, boathouses, landscaping, etc. Under the *Limitations Act*, it is not possible for persons to obtain prescriptive rights against road allowances, even those that are unopened; therefore, the issue of appropriate use of the road allowance arises.

Georgina wishes to resolve this issue of use of the untraveled portion of the Lake Drive road allowance. We have been asked to provide and evaluate mechanisms by which Georgina may provide exclusive use of the untraveled portion of the Lake Drive road allowance adjacent to the lake.

It should be noted that in this instance, many property owners along Lake Drive have claimed that they own the land adjacent to the water as they, and their predecessors in title, have had use of the land for many years. In fact, some Lake Drive property owners possess deeds from their predecessors in title which purport to convey title to such lands.

It should also be noted that the issues as between Georgina and residents of Lake Drive concerning the ownership or exclusive use of the untraveled portion of the road allowance adjacent to the lake has not been determined in Court.

OPTION 1: SALE OF ORIGINAL SHORE ROAD ALLOWANCE

This option allows residents to purchase portions of the original shore road allowance from Georgina. It entails the closure and conveyance of a portion of the original shore road allowance adjacent to the lake and which abuts the resident's property. It must be noted that Georgina will, if the lakeshore is owned by the Federal Government, be required to obtain the consent of the Federal Government in order to pass a by-law to permanently close a road allowance pursuant to section 34(2) of the *Municipal Act*.

Implementation

In this scenario, Georgina would enact a by-law to regulate the disposition and acquisition of municipal property which would set out the policies and procedures to be followed which could lead to the execution of an Agreement of Purchase and Sale. The by-law should detail the steps to be taken by the resident wishing to purchase the subject lands when making an application to Georgina to purchase the portion of original shore road abutting their property.

The portion of the untraveled portion of the shore road allowance to be closed and conveyed should be established with straight lot line projections from existing lot lines to the shoreline; however, these may vary from straight extensions due to the irregular nature of the shoreline. The resident would be required to pay for and supply Georgina with a new Reference Plan prepared by an Ontario Land Surveyor. The closure of the untraveled portion of the road allowance would be measured from the travelled portion of the road allowance (Lake Drive) and should exclude any lands needed by Georgina to maintain the traveled portion of the road allowance.

Georgina should also specify within the by-law how applications to purchase lands are to be processed, assessed and, finally, determined.

Typically, municipalities calculate land acquisition costs based on the square footage of the closed road allowance as determined by the Reference Plan and subject to any fees set out in the municipality's by-law. Municipalities typically do not approve applications of this nature if: (i) the closure is deemed to have a negative impact on neighbouring owners of land; (ii) other land owners may be deprived of the sole vehicular access to their property; (iii) closure will result in conflicts with municipal plan policies, by-law regulations or

procedures; and (iv) there is an adverse impact upon the operation or maintenance of the travelled portion of the road.

The cost of the application, plus all associated costs, including legal fees, are almost always paid by the resident who wishes to purchase the subject land.

Rights of Each Party

The Resident

The benefit of a sale is that residents would now own the land to the shoreline and, therefore, would be able to enforce their rights against any trespassers. The size of the resident's total property holding would also increase and, therefore, the value of the resident's property would appreciate. Further, any structures already on the lot would now be constructed on the resident's own property. However, it should be noted that all structures must still comply with all applicable zoning and any other regulations.

The main downside to this option is the time it may take for an application to be processed and decided upon. It should also be noted that residents will be subject to costs of an application to purchase the lands with no guarantee that Georgina will approve of the sale.

The Town

Georgina would benefit from a sale as it would no longer be liable for any activity on that land. The Town would also retain control over development along the shoreline because residents would still be required to obtain all applicable permits and approvals before constructing or altering any kind of structure on what would now be their property.

One disadvantage of a sale of lands adjacent to Lake Drive is the possibility that scattered purchases may create pockets of "public" land which effectively become isolated parcels. The impact of this should not be underestimated, as it is certainly possible that it will result in a 'patchwork' of land ownership by Georgina adjacent to the lake which will require ongoing monitoring, maintenance and insurance costs.

OPTION 2: LICENCE OF OCCUPATION (USE OF MUNICIPAL LAND)

This option allows the resident to enter into a temporary license agreement with Georgina for existing or future encroachment(s) for a finite period of time. The licence could include an option to purchase the lot at the expiry of the licence term.

Implementation

Georgina would enact a policy to establish a procedure for residents to enter into licence agreements for encroachments on Town property. The licence agreement would be for a finite period of time – typically five to ten years, wherein at the expiry of the term, the resident would either remove or relocate encroachments (i.e. structures) located on the lot

at the resident's expense and return the property to its natural state. Conversely, the resident may, at Georgina's option, be permitted to purchase the shore road allowance from Georgina.

In considering whether to grant a licence, Georgina should require a detailed site plan which clearly indicates the location of all existing structures/encroachments on the lot, the distance from the encroachments to the abutting lot lines and from the shore line, the vegetation of the shoreline and any driveways and paths. After receiving and reviewing the application, Georgina staff would draft a report on the merits of the licence and submit the proposed licence to Council for approval or refusal.

The licence agreements should ensure that the licence is non-transferable and, therefore, would terminate upon change of ownership of the property abutting the opposite side of the road allowance (i.e. the home or cottage lands).

Georgina should also require the resident licensee to obtain liability insurance and submit annual proof of same. The liability insurance would cover the encroachments in a certain minimum amount set by Georgina (i.e. \$2 million) with Georgina named as an additional insured. The resident's policy would be the primary policy.

The cost of a licence should be determined based upon the value of the land that is subject to the licence.

Rights of Each Party

The Resident

The benefit of a licence is that it allows residents to use municipal land and any structures already encroaching upon the land to remain. In addition, of the three options, this is likely the least expensive option for the residents.

The disadvantage of this approach for the residents is that the licence may be terminated by Georgina based upon the terms of the licence agreement. No permanent rights of any kind whatsoever would be conferred to the resident by way of the licence agreement. The residents obtaining the licence would also be responsible for all costs associated with the granting of the licence, which would include conducting a survey to establish the exact area of land to be subject to the licence agreement and all costs related to the preparation and execution of the required agreement.

It should also be noted that the resident may also have difficulty in obtaining insurance for the lands subject to the licence because this is not a common method by which to grant a right to use land and some insurers may not be willing to provide insurance on the land that is subject to a license.

The Town

The main benefit of this approach to Georgina is the fact that the Town retains most of its property rights in this option. Georgina would be able to look to the licensee's insurer for any claims that may arise as a result of the use of the land.

OPTION 3: LEASE THE LAND

This option allows residents to have exclusive use of a portion of the original shore road allowance for a certain period of time with a possible option of renewal.

Implementation

Georgina would enact a policy to provide a procedure for leasing the land for any number of years up to a maximum set by Georgina (typically maximum lease of 20 years). The resident applying to lease the land would pay all application fees and legal costs associated with the lease. The resident would be required to provide Georgina with a survey to establish the area of the land to be subject to the lease. The survey would also need to show current buildings and encroachments, if any, situated on the lands. After receiving and reviewing the application, Georgina staff would draft a report on the merits of the lease and submit the proposed lease to Council for approval or refusal.

The lease amount would be set by Georgina and should be based upon the value of the land that is subject to the lease.

Rights of Each Party

The Resident

The benefit of the lease option is that the resident obtains exclusive use of the land and an ownership interest therein. The resident would also, presumably, be granted the authority to assign his/her interest in the lease to a successor in title subject to the reasonable consent of Georgina. A lease would also likely be renewed subject to the terms of the lease.

The disadvantages to the lease option are that no permanent rights of any kind whatsoever are conferred by the lease as Georgina would retain ownership of the land.

The Town

The benefits of the lease option for Georgina are that it will be at the sole discretion of Georgina as to whether to grant the lease or an extension of same. Further, Georgina will retain control over the construction and/or alteration of the shoreline. Georgina may profit more under this option than the above two options as the price and terms of the lease allow for Georgina to receive an annual and steady income from the subject property.

We would be pleased to answer any questions that you may have regarding this opinion.

Yours truly,

**RITCHIE KETCHESON
HART & BIGGART LLP**



R. Andrew Biggart

RAB/bjc